

COPY TO:
Ronald A. Burt
c/o Patterson Planning & Services, Inc.
4525 Harding Rd.
Suite B-215
Nashville, TN 37205

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Former Kearney-KPF Facility
1624 East Alpine Avenue
Stockton, California 95205

This Covenant and Agreement ("Covenant") is made by and between Alpine Builders, Inc. (the "Covenantor"), the current owner of certain property situated in San Joaquin County just outside of Stockton, California at 1624 East Alpine Avenue, Township 2N, Range 6E, in the northwest quadrant of the northeast quadrant of Section 35, and further described in Exhibit A - Legal Description, attached hereto and incorporated by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials in the groundwater as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, totaling approximately 12.6 acres of land is located south of Alpine Avenue. The Property is located in the area now generally bounded to the west by the Southern Pacific Railroad, to the north by Alpine Avenue, to the east by a private roadway, and to the south by private land and a Union Pacific railroad spur. The northern portion of the Property is zoned for limited manufacturing and the southern portion is zoned for general manufacturing. The land located immediately west of the Property is zoned for commercial use, limited manufacturing, and commercial manufacturing. The land located north of Alpine Avenue is zoned for residential use. The land located to the east and south of the site is zoned for manufacturing. The Property is more specifically described as County Assessor's Parcel Number 117-080-06.

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Recorded in Official Records
County of San Joaquin
GARY W. FREEMAN
Assessor-Recorder-County Clerk
Paid by SHOWN ON DOCUMENT



1.02 From 1951 until 1984, KPF Electric Co. manufactured high-voltage switching devices at the Property for utility companies. In June 1984, Kearney-National, Inc. acquired KPF Electric Co. and continued the manufacturing operations until 1997. The operations at various times included a galvanizing process, silver-plating process, foundry, beryllium annealing/molding/lathing area, machine shops, paint shops, welding shops, assembly lines, and a quality control testing laboratory. In 1999, the Covenantor purchased the Property from Kearney-National, Inc. and developed the Property for mixed commercial uses.

1.03 The prior manufacturing operations involved management of hazardous waste and resulted in contamination of the soil and groundwater at the Property, primarily through releases to two on-site ponds. Kearney-National, Inc. has investigated and remediated the contamination under the oversight of the Department and the Central Valley Regional Water Quality Control Board. Kearney-National, Inc. conducted closure activities, including removal of contaminated soil, at the Property pursuant to a Revised Closure Plan approved by the Department. The Department has determined that the soil at the Property has been remediated to a level acceptable for non-restricted use. However, since the groundwater is still contaminated with hazardous waste, Kearney-National, Inc. is conducting post closure activities and corrective action at the Property, including operation and maintenance of a groundwater extraction and treatment system., pursuant to a Hazardous Waste Facility Post Closure Permit issued by the Department, effective March 25, 1992 and recently renewed by the Department, effective July 22, 2004.

ARTICLE II DEFINITIONS

2.01 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01 Restrictions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every one of the Restrictions: (a) shall run with the land pursuant to Health and Safety Code sections 25202.5 and 25202.6, and Civil Code section 1471; (b) shall inure to the benefit of and pass with each and every portion of the Property, (c) shall apply to and bind the respective successors in interest to the Property, (d) are for the benefit of, and shall be enforceable by the Department, and (e) are imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding Upon Owners/Occupants. Pursuant to Health and Safety Code section 25202.5(b), this Covenant shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the covenantee(s) herein. "Owner" shall include "Covenantor".

3.03 Written Notice of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice that a release of hazardous substances has come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant.

3.04 Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, by administrative order, or specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS AND ACCESS

4.01 Prohibited Use. The Property shall not be used in any way that may impede or interfere with the performance of any post closure activity or corrective action required for the Property, including the operation and maintenance of groundwater extraction and treatment system.

4.02 Prohibited Activities.

(a) No Owner or Occupant shall engage in any activity that may impede or interfere with the performance of any post closure activity or corrective action required for the Property, including the operation and maintenance of groundwater extraction and treatment system.

(b) No groundwater shall be extracted on the Property for purposes other than post closure care activities or corrective action or construction dewatering.

4.03 Access. Covenantor agrees that the Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant and as deemed necessary by the Department in order to protect the environment or public health. Covenantor further agrees that the entity or person who has the responsibility to implement post closure care activities and corrective action at the Property shall have reasonable right of entry and access to the Property until such time as the Department determines that no further post closure care or corrective action is required.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor and/or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Covenantor and/or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property constructed in violation of the Restrictions). Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions against the Covenantor and/or Owner as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01 Variance. Any Owner or, with the Owner's written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25202.6.

6.02 Termination. Any Owner, and/or, with the Owner's written consent, any Occupant of the Property, or any portion thereof, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25202.6.

6.03 Term. Unless ended in accordance with the Termination Paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Joaquin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice

shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Mr. Christopher Bennett
Alpine Builders, Inc.
1624 East Alpine Avenue
Stockton, California 95205

To Department: Branch Chief
Northern California Permitting and Corrective Action Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantor"

//original signed by//

Date: 1-11-05

By:

Alpine Builders, Inc.

CHRISTOPHER BENNITT PRES

Print Name and Title

"Department"

//original signed by//

Date: 1/20/05

By:

James M. Pappas, P. E., Branch Chief
Northern California Permitting and
Corrective Action Branch

(NOTE: BOTH PARTIES' SIGNATURES MUST BE NOTARIZED.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

SS.

On January 20, 2005 before me, Kathleen Duncan
(Name and Title of Officer (e.g., "John Doe, Notary Public"))
 personally appeared James M. Pappas
(Name(s) of Signer(s))

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathleen Duncan
(Signature of Notary Public)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property
 Document Date: January 20, 2005 Number of Pages: 6 + exhibit
 Signer(s) Other Than Named Above: n/a

Capacity(ies) Claimed by Signer

Signer's Name: James M. Pappas

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: Department Representative

Signer Is Representing: Department of Labor Subcontractor

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Joaquin

On January 11, 2005 before me, N. Furtado, Notary Public

DATE

NAME, TITLE OF OFFICER

personally appeared Christopher Bennitt

NAME(S) OF SIGNER(S)

☐ Personally known to me OR ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal

N. Furtado
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNED

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER
President
TITLE(S)
☐ PARTNER(S) ☐ LIMITED
 ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to Restrict Use of Property

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

ATTACHMENT A

The land referred to in this Report is situated in the County of San Joaquin, State of California, and is described as follows:

(Unincorporated Area)

A tract of land situated in the County of San Joaquin, State of California, in Section 30 of C.M. Weber Grant, and more particularly described as follows to wit:

Beginning at an iron pipe in the south line of Alpine Avenue bearing south $72^{\circ} 02'$ west 1120.43 feet from a steel stile at the northwest corner of property of Stockton Unified School District, described in Deed recorded in Book of Official Records of San Joaquin County, Vol. 897, at Page 8, and also shown on Map of Survey of 10.707 acre tract, filed in Book of Surveys, Vol. 6 at Page 64, San Joaquin County Records; thence along the west line of a road right of way, 25 feet wide, south $15^{\circ} 52' 30''$ east, 354.32 feet to an iron pipe; thence south $62^{\circ} 20'$ west, 116.00 feet to an iron pipe; thence south $52^{\circ} 11'$ west 113.28 feet to an iron pipe; thence south $41^{\circ} 45'$ west 255.15 feet to an iron pipe; thence south $73^{\circ} 45'$ west 520.10 feet to an iron pipe; thence south $16^{\circ} 04'$ east 152.75 feet to an iron pipe; thence south $52^{\circ} 50'$ west 100.00 feet to an iron pipe; thence south $43^{\circ} 34'$ west, 126.85 feet to an iron pipe; thence south $35^{\circ} 13'$ west 100.00 feet to an iron pipe in the easterly line of right of way of the Southern Pacific Railroad; thence along the said easterly line of Railroad Right of Way, north $3^{\circ} 06'$ east 890.63 feet to an iron pipe in the south line of Alpine Avenue; thence along the south line of Alpine Avenue, north $72^{\circ} 02'$ east, 944.96 feet to an iron pipe at the point of beginning, together with the right to use for roadway purposes, a strip of land 25 feet wide lying east of and adjoining the east line of the above-described 12.63 acre tract, and extending from the northeast corner of said 12.63 acre tract, south $15^{\circ} 52' 30''$ east 354.32 feet.

Also together with the right to use for roadway purposes, a strip of land described as follows:

Beginning at the southwest corner of the above-described 12.63 acre tract, thence along the easterly line or right of way of Southern Pacific Railroad, south $3^{\circ} 06'$ west, 328 feet to the easterly line of the public road known as West Lane; thence along the easterly line of said West Lane, south 13° east, 55.56 feet; thence north $3^{\circ} 06'$ east 259.83 feet; thence north $23^{\circ} 56'$ east, 100.55 feet; thence north $28^{\circ} 14'$ east 81.2 feet; thence north $38^{\circ} 50'$ east, 121.0 feet; thence north $52^{\circ} 32'$ east, 83.4 feet; thence north $15^{\circ} 04'$ west, 38.0 feet to an iron pipe at a corner of the above-described 12.63 acre tract; thence along the southerly line of said 12.63 acre tract, as follows: south $52^{\circ} 50'$ west, 100.00 feet to an iron pipe; south $43^{\circ} 34'$ west 126.85 feet to an iron pipe; south $35^{\circ} 13'$ west, 100.00 feet to an iron pipe at the point of beginning. Excepting from said right of way herein granted, the north 24 feet thereof presently used as and for a spur track.

NOTE: Said premises are also shown on a Record of Survey filed October 17, 1950, in Record of Surveys, Vol. 8, Page 130, San Joaquin County Records.

Assessor's Parcel Number: 117-080-06